evidence were it not for the additional fact that the work was constructed in accordance with plans furnished by the city engineer which fact presumably lent a different aspect to the case.

NEGLIGENCE — CONTRIBUTORY NEGLIGENCE — VOLUNTARY ACTS. — The employes of defendant telephone company negligently removed a service cock from a city water main, permitting the water to be forced into the open window of apartments of which plaintiff was housekeeper. In attempting to close the window to prevent injury to the room and its contents, she was knocked down and had her clothing soaked with water, causing her to become ill. *Held,* that since plaintiff's act was voluntary, she assumed the consequences of getting wet and could not recover. *Taylor* v. *Home Telephone Co.* (1910), — Mich. —, 128 N. W. 728.

The principle underlying this decision, and expressed in the maxim, "volenti non fit injuria," has been stated as follows: "One who, knowing and apprehending a danger, voluntarily assumes the risk of it, has no just cause of complaint against another who is primarily responsible for the existence of the danger." *O'Maley* v. *Gaslight Co.,* 158 Mass. 135, 32 N. E. 1119, 47 L. R. A. 161. Courts have frequently refused to so apply this principle as to deny the right to recover damages to one who has at actual risk of injury sought to save property, where his effort has been such as a reasonably prudent man would have made under similar circumstances. *Thompson* v. *Seaboard Air Line R. Co.* (1908), 81 S. C. 333, 62 S. E. 396, 20 L. R. A. (N. S.) 426; *Henry* v. *Cleveland etc. R. Co.,* 67 Fed. 426; *Berg* v. *Great N. R. Co.,* 70 Minn. 272, 73 N. W. 648; *Pullman Palace Car Co.* v. *Laack,* 143 Ill. 242, 32 N. E. 285, 18 L. R. A. 215; but other courts hold that a person who voluntarily places himself in a position of danger simply for the protection of property, is negligent so as to preclude recovery for an injury received. *Cook* v. *Johnson,* 58 Mich. 437, 25 N. W. 388, 55 Am. Rep. 703; *Morris* v. *Lake Shore etc. R. Co.,* 148 N Y. 182, 42 N. E. 579; *Condiff* v. *Kansas City etc. R. Co.,* 45 Kan. 256, 25 Pac. 562; *Seale* v. *Gulf etc. R. Co.,* 65 Tex. 274, 57 Am. Rep. 602. In view, however, of the duty which the law casts upon the owner of property to minimize the loss caused by another's willful or negligent act, it is difficult to see why the attempt of a third person to minimize the loss of the negligent party, as in the principal case, should be allowed to be used by the latter as a ground of defense in an action for damages for an injury resulting from such attempt.

PRINCIPAL AND AGENT—INTOXICATING LIQUORS—ILLEGAL SALES TO MINOR. —The agent of defendant, a licensed saloon keeper, delivered liquor to a minor, under the belief that the minor was buying as agent for another, whose identity was unknown and was not disclosed. *Held,* that this constituted a sale to the minor, under a statute forbidding a sale to a minor, even though the one for whom the liquor was bought was an adult. *State* v. *Nichols* (1910), — W. Va. —, 69 S. E. 304.

Cases upon a similar state of facts are constantly coming before the courts. There is no question on principle and on authority that if the principal is disclosed there is no sale to the minor agent. *Monaghan* v. *State,* 66

Miss. 513. The argument of the defendant in such cases as the principal case is that as it is a sale to an undisclosed principal, under the well recognized rule of agency, the seller on learning the name of the principal can elect to treat the transaction as a sale to the principal, and not to the agent, and on so doing, if the principal is an adult, there is no sale to a minor, as the election to rely on the principal drops the agent from the transaction. If the strict principles of agency are to be applied this seems to be a very strong argument. In other words, the saloon keeper can at all times assume that the principal is an adult, as well when the name is not disclosed as when it is; and as the important thing under these statutes is the determination of the identity of the one who furnished the money and obtained the liquor, that this should turn on the actual facts, and not on the mere disclosure or mention of a *name,* the burden, however, being at all times upon the defendant to show the age of the principal. However, most of the cases are against this position. *Neely* v. *State,* 60 Ark. 66; *Holmes* v. *State,* 88 Ind. 145; *Com.* v. *Joslin,* 158 Mass. 482; *Ritcher* v. *State,* 63 Miss. 304; *Ross* v. *People,* 17 Hun 591.

SURETYSHIP—DISCHARGE OF SURETY BY FORGED RENEWAL OF NOTE.—The maker of a note on which the defendant was a surety gave a renewal note, forging defendant's name as surety. The maker becoming insolvent, action is brought against defendant as surety on the former note. *Held,* that the surrender of the old note and subsequent extension of time was a complete discharge. *Reints & DeBuhr* v. *Uhlenhopp* (1910), — Iowa —, 128 N. W. 400.

This decision does not seem to be in harmony with those of several other courts, though perhaps, in line with the trend of decisions in Iowa. In *Kirby* v. *Landis,* 54 Iowa 150, the court said the surety is discharged if prejudiced by the renewal. No authority is cited, the court reasoning from analogy that the surety would be discharged if told by the creditor that the debt was paid, hence he is discharged upon a cancellation of the instrument. In case the creditor is acting under a fraudulent inducement, it is at least doubtful whether his statement that the debt is paid, will discharge the surety, thus the premise upon which the court's argument is based is open to dispute. In *Hubbard* v. *Hart,* 71 Iowa 668, 33 N. W. 233, the surety was not discharged by the renewal, but in this case he discovered the fraud before giving up security which he held. In *Dwinnell* v. *McKibben,* 93 Iowa 331, 61 N. W. 985, the surety was not discharged by an extension fraudulently procured, but it does not appear whether or not the surety was particularly prejudiced. The court in the principal case re-announces the doctrine of *Kirby* v. *Landis,* supra, depending more, it would seem from the expression used, on authority, than on any conviction as to the justice of the case or the rules of law governing it. In *Stratton* v. *McMakin,* 84 Ky. 641, the court held that an extension procured by forgery did not excuse the obligor whose name was forged, though he had been prejudiced thereby. In *Carter* v. *Bank of Columbia,* 12 Ky. Law Rep. 968, 16 S. W. 79 the facts were identical with those of the principal case, the surety being held liable.